

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2016

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.33749 of 2014

Mr.A.Anbalagan

... Petitioner

Vs.

1.The Government of Tamil Nadu
rep. by Secretary to Government,
Home Department, Fort St. George,
Chennai-600 009.

2.The Director General of Police,
Mylapore, Chennai-600 004.

3.P.Selvaraj,
Deputy Superintendent of Police,
Kanyakumari Sub-Division,
Kanyakumari District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1st respondent to promote the petitioner as Deputy Superintendent of Police (Category-I), on part with his junior, the 3rd respondent herein, with all consequential benefits.

For Petitioner : Mr.A.Kalaiselvan

For respondents : Mr.K.Dhananjayan, Spl GP.

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus, directing the 1st respondent to promote the petitioner as Deputy Superintendent of Police (Category-I), on part with his junior, the 3rd respondent herein, with all consequential benefits.

2.In the affidavit filed in support of the writ petition it has been averred by the petitioner as follows:-

2-1.The petitioner was directly recruited as Sub-Inspector of Police in the year 1987 and he joined duty on 25.06.1987 and then, promoted as Inspector of Police in the year 1999. In the 'C' list of Sub-Inspector of Police (Category-I) fit for promotion as Inspector of Police for the year 1999-2000, published on 12.08.1999, the petitioner's name was shown at S.No.118 and his junior's (3rd respondent) name

was shown at S.No.121. But, thereafter, the 3rd respondent was further promoted as Deputy Superintendent of Police (Category-I) under Rule 10(a)(i) of General Rules for Tamil Nadu State and Subordinate Services vide order dated 18.11.2013 of the Secretary to Government, the 1st respondent herein. Though the petitioner's junior was promoted as DSP, the petitioner was not promoted along with his junior. Hence, the petitioner made a representation dated 05.03.2014 to the 1st respondent in person, followed by another representation dated 04.12.2014; but, the same were not considered by the 1st respondent.

2-2.It is further stated by the petitioner that during the year 2010, a charge-memo was issued to the petitioner on the allegation that he demanded Rs.10,000/- as illegal gratification. Pursuant to the same, departmental proceedings were initiated against the petitioner, which was ended in imposing the punishment of reduction in pay by three stages for five years with cumulative effect i.e., order dated 14.09.2010 of the DIG, Salem Range and it was confirmed in the appeal also by the DGP by his order dated 05.02.2014. Challenging the said punishment, the petitioner has filed a writ petition.

2-2.According to the petitioner, pendency of the departmental proceedings or punishment imposed on him cannot stand in his way of promotion inasmuch as the promotion to the post of Deputy Superintendent of Police given to his junior (3rd respondent) is only on a temporary basis under Rule 10(a)(i) of TNSSS. Further, the State Government of Tamil Nadu passed an order in G.O.Ms.No.368 (P & DR) Home Department, dated 18.10.1993, under which the competent authority is authorised to deny any promotion pending departmental proceedings or during the currency of punishment. When the said Government Order was challenged in a batch of writ petitions, this Court held that the said GO cannot be equated to the Rule framed under Article 309 of the Constitution of India, and it is only an administrative instruction. As such, withholding the promotion is illegal and impermissible under statutory Rules. Since the petitioner was not given promotion, the petitioner has come forward with the present writ petition before this Court seeking to direct the 1st respondent to give promotion to him as Deputy Superintendent of Police.

3.The learned counsel appearing for the petitioner made his submission, by adverting to the contentions raised in the affidavit.

4.The learned Special Public Prosecutor, by filing a detailed counsel, opposing the prayer of the petitioner, contending that since the petitioner has been imposed with a punishment of reduction in pay by three stages for five years with cumulative effect on 14.09.2010, his name was not considered for promotion and that there is no illegality or violation of statutory rules.

5.Heard the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

6.This writ petition has been filed seeking to direct the 1st respondent to give promotion to the petitioner to the post of Deputy Superintendent of police. Considering the facts and circumstances of the case and the submissions made on either side, I am of the opinion that such a positive direction cannot be given to the 1st respondent.

7.However, this Court directs the petitioner to give a fresh representation to the 1st respondent with regard to his promotion to the post of Deputy Superintendent of Police, along with a copy of this order, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the 1st respondent is directed to consider the same and to pass appropriate orders on merits and in accordance with law, within a period of six weeks thereafter. It is made clear that this Court has not expressed any opinion on the merits of the claim made by the petitioner and it is for the 1st respondent to pass orders wholly on merits and in accordance with law.

With the above direction, the writ petition is disposed of. No costs.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

ssv

To

1.The Secretary to Government,
Government of Tamil Nadu
Home Department,
Fort St. George,
Chennai-600 009.

2.The Director General of Police,
Mylapore, Chennai-600 004.

2 ccs to Mr.A.Kalaiselvan, Advocate, Sr. 59270
1 cc to Government Pleader, Sr. 59661

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